

**Editor's note: Reconsideration denied by order dated Aug. 12, 1976; Appealed -- aff'd, Civ. No. C-77-15 (E.D.Wash. Aug. 31, 1979)**

J. C. BABCOCK  
J. G. SHIPP

IBLA 76-517

Decided June 30, 1976

Appeal from decision of the Oregon State Office, Bureau of Land Management (BLM), declaring JB and LG Nos. 1, 2 and 3 mining claims null and void ab initio (OR-15412).

Affirmed.

1. Acquired Lands--Mining Claims: Lands Subject to

Patented lands which are subsequently acquired by the United States are not, by mere force of reacquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws.

APPEARANCES: Robert W. Garver, Esq., Garver, Garver & Leinen, Camas, Washington, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

J. C. Babcock and J. G. Shipp appeal from decision OR-15412, dated January 30, 1976, of the Oregon State Office, Bureau of Land Management (BLM), declaring their JB and LG Nos. 1, 2 and 3 mining claims null and void ab initio. The mining claims are located in sections 6 and 7, T. 2 N., R. 16 E., W.M., Washington. They were originally located and recorded on August 7, 1975.

The BLM State Office declared appellants' mining claims null and void because they are situated on land acquired in 1962 by the Corps of Engineers, [\*\*2] Department of the Army (Corps), for the John Day Lock and Dam Project on the Columbia River. BLM concluded that such acquired land is not open to location under the mining laws, citing Rawson v. United States, 225 F.2d 855 (9th Cir. 1955), cert. denied, 350 U.S. 934 (1956), and 43 CFR 3811.2-9.

Appellants assert that the land in question was not purchased for actual use in the Corps' project but rather to exchange for land which was needed for the project and owned by the Burlington-Northern Railroad. They argue that this distinguishes their case from Rawson v. United States, supra. We do not agree.

[1] Patented lands which are subsequently acquired by the United States are not, by mere force of reacquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land remains closed to location under the mining laws. Thompson v. United States, 308 F.2d 628, 631-33 (9th Cir. 1962); Rawson v. United States, supra; Ernest Smith, 4 IBLA 192, 78 I.D. 368 (1971).

The John Day Lock and Dam Project was authorized by section 204 of the Flood Control Act of 1950, 64 Stat. 170. Under section 201 of that Act, section 3 of the Act of June 22, 1936, 49 Stat. 1571, as amended by section 2 of the Act of June 28, 1938, 52 Stat. 1215, 33 U.S.C. §§ 701c, 701c-1 (1970), "shall apply to all works authorized in this title." Under 33 U.S.C. § 701c-1 (1970), "the Secretary of the Army is authorized and directed to acquire in the name of the United States title to all lands, easements, and rights-of-way necessary for any dam or project \* \* \*." Neither 33 U.S.C. § 701c nor § 701c-1 opens land acquired thereunder to location under the mining laws. Appellants' argument that the land on which their mining claims are located was not acquired for actual use in the John Day Lock and Dam Project is not supported by the statutes. Congress further states in 33 U.S.C. § 701c-1 (1970) that "lands, easements, and rights-of-way shall include \* \* \* highway, railway, and utility relocation."

The land on which appellants' mining claims are located was therefore acquired by the Corps for special use under a statute which does not authorize locations under the mining laws. Appellants have not shown any authority whereby the mining laws could be applied to this acquired land. Cf. Bobby Lee Moore, et al., 72 I.D. 505 (1965), aff'd. sub nom., Lewis v. GSA, 377 F.2d 499 (9th Cir. 1967), discussing the distinction between "public lands" and "acquired lands" in regard to the applicability of the public land laws. At the time appellants located their claims, the land was not subject to locations under the mining laws. The BLM State Office was therefore correct in declaring the mining claims null and void ab initio. John Boyd Parsons, 22 IBLA 328 (1975); cf. Ernest Smith, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson

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Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Martin Ritvo  
Administrative Judge

